

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

KIWANNA K. CUNNINGHAM,

No. C 16-06429 JSW

Plaintiff,

v.

D'ARCY BUSH,

Defendant.

**ORDER TO SHOW CAUSE WHY CASE  
SHOULD NOT BE DISMISSED AND  
TRO DISSOLVED FOR FAILURE TO  
PROSECUTE**

On November 3, 2016, the Court received the Notice of Removal of Civil Action, removing this action from the Superior Court of California, County of Alameda to this Court by Defendant. Defendant contends the United States Attorney for the Northern District of California has certified that D'Arcy Bush was acting within the course and scope of his employment with the United States Postal Office at all times material to the alleged incidents giving rise to the civil harassment claim made by Plaintiff, who is appearing *pro se*. Accordingly, the United States was automatically substituted for defendant D'Arcy Bush pursuant to 28 U.S.C. Section 1442(a)(1).

From its review of the record, the Court determined that prior to removal, on September 26, 2016, upon receipt of a request from Plaintiff, the Superior Court issued a temporary restraining order ("TRO") against defendant Bush ordering Bush to stay at least three yards away from Plaintiff and Plaintiff's home, car, and three children, their school and day care. (Notice of Removal, ¶ 3, Ex. 2.) The TRO was set to expire on October 17, 2016. (*Id.*) On October 17, 2016, the Superior Court issued an order continuing the hearing date to November 7, 2016, based on the fact that Bush had

1 not been served. (*Id.* at ¶ 4, Ex. 3.) The TRO was set to remain in place until that date. (*Id.*) On  
2 October 28, 2016, Bush filed a response to the request for the civil harassment restraining order,  
3 disputing its terms and denying the conduct alleged. (*Id.* at ¶ 5, Ex. 4.) On October 31, 2016,  
4 Plaintiff filed a proof of service indicating that Bush was served on October 23, 2016. (*Id.* at ¶ 6,  
5 Ex. 5.) On October 25, 2016, the United States Attorney's Office received notice of this pending  
6 action from the United States Postal Service and thereafter removed.

7 On November 4, 2016, this Court issued an order requiring in-person service to Plaintiff and  
8 continuing the TRO to expire at the conclusion of a hearing by this Court and set such hearing for  
9 December 16, 2016 at 9:00 a.m. The Court advised Plaintiff to seek information from the Legal  
10 Help Center.

11 On November 10, 2016, the Court received a motion filed by Defendant to dismiss the action  
12 for lack of jurisdiction and to dissolve the TRO. A response from Plaintiff was due no later than  
13 November 28, 2016. The Court has received no response.

14 Accordingly, Plaintiff is **HEREBY ORDERED TO SHOW CAUSE** why this case should not  
15 be dismissed. If Plaintiff seeks to file an untimely opposition to Defendant's motion to dismiss and  
16 to dissolve the TRO, she must submit a request showing good cause for her failure to file an  
17 opposition within the time required by the Local Rules and shall submit a proposed opposition brief  
18 with any such request. Plaintiff's response to this Order to Show Cause shall be due by no later than  
19 December 9, 2016. If Plaintiff responds, Defendant shall have until December 13, 2016 to file its  
20 reply. If Plaintiff fails to file a response to this Order by December 9, 2016, the Court shall dismiss  
21 this case without prejudice for failure to prosecute and shall dissolve the TRO and vacate the hearing  
22 on the TRO currently set for December 16, 2016 at 9:00 a.m.

23 The Court again **ADVISES** Plaintiff that a Handbook for Pro Se Litigants, which contains  
24 helpful information about proceeding without an attorney, is available through the Court's website  
25 or in the Clerk's office. The Court also advises Plaintiff that he also may wish to seek assistance  
26 from the Legal Help Center. Plaintiff may call the Legal Help Center at (415) 782-8982 or sign up  
27 at the United States District Courthouse, 1301 Clay Street, Oakland, California, Room 470S, for a  
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1 free appointment with an attorney who may be able to provide basic legal help, but not legal  
2 representation.

3  
4 **IT IS SO ORDERED.**

5 Dated: December 1, 2016

  
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JEFFREY S. WHITE  
UNITED STATES DISTRICT JUDGE

